

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

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|---------------------------------------|---|--------------------------------------|
| <b>COMMODITY FUTURES TRADING</b>      | : |                                      |
| <b>COMMISSION,</b>                    | : |                                      |
| <b>Plaintiff,</b>                     | : | <b>CIVIL ACTION NO. 03-80032</b>     |
|                                       | : |                                      |
| <b>v.</b>                             | : | <b>Complaint for injunctive and</b>  |
|                                       | : | <b>Other Equitable Relief and</b>    |
| <b>WORLD-WIDE CURRENCY</b>            | : | <b>For Civil Penalties Under the</b> |
| <b>SERVICES, CORP., GENADY</b>        | : | <b>Commodity Exchange Act, As</b>    |
| <b>SPIVACK A.K.A. GEORGE SPIVACK,</b> | : | <b>Amended, 7 U.S.C. §§ 1-25</b>     |
| <b>AND ELLISON KENT MORRISON,</b>     | : |                                      |
| <b>Defendants.</b>                    | : |                                      |

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**I.**

**SUMMARY**

1. Since at least December 21, 2000, World-Wide Currency Services Corp. (“World-Wide”), Gennady Spivack (“Spivack”), and Kent Morris (“Morris”) (collectively known as the “defendants”) have fraudulently offered and sold foreign currency futures contracts to the retail public under the guise of selling spot currencies. World-Wide, through its telemarketers, solicits investments in managed foreign currency futures accounts by making false claims of significant profits and by emphasizing that investing with World-Wide is safe. Unbeknownst to customers, funds are not traded regularly, if at all. World-Wide uses the majority of solicited funds for operating and personal expenses. In addition, a majority of customers lose most, if not all, of their purported investment.

2. Because these transactions are not consummated on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission (“Commission”), or consummated on a market registered as a derivatives transaction

execution facility, defendants have violated Section 4(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6(a)(2001).

3. In addition, by misrepresenting the likelihood of profit, minimizing or omitting the risk of loss associated with the transactions, misappropriating customer funds, and failing to disclose that customer funds are misappropriated, defendants have violated Section 4b(a)(2) of the Act, 7 U.S.C. §6b(a)(2)(2001) and Commission Regulation 1.1, 17 C.F.R. § 1.1 (2001).

4. As a telemarketer for World-Wide who made material misrepresentations and omissions to customers or prospective customers, defendant Morris is directly liable for violating Section 4b(a)(2) of the Act and Commission Regulation 1.1. For offering to enter into, entering into, executing, confirming the execution of, or conducting business for the purpose of soliciting, or accepting any order for, or otherwise dealing in any transaction in, or in connection with, an illegal contract for the purchase or sale of a commodity for future delivery, Morris is liable for violating Section 4(a) of the Act.

5. For making material misrepresentations and omissions to customers or prospective customers, defendant Spivak is directly liable for violating Section 4b(a)(2) of the Act and Commission Regulation 1.1. In addition, defendant Spivak, as a controlling person of World-Wide, is liable for World-Wide’s violations of Sections 4(a) and 4b(a)(2) of the Act and Commission Regulation 1.1, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) ("Section 13(b)").

6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Plaintiff Commission brings this action to enjoin the unlawful acts and practices of defendants and to bar them from engaging in any commodity-related activity, including soliciting new customers or customers’ funds. In addition, the Commission seeks civil monetary penalties

in the amount of not more than the higher of \$120,000 or triple the monetary gain to defendants for each violation of the Act, disgorgement of defendants' ill-gotten gains, restitution to customers, prejudgment interest and such other relief as this Court may deem necessary or appropriate.

7. Unless enjoined by this Court, defendants are likely to continue to engage in the unlawful acts and practices alleged in this Complaint, as more fully described below.

## **II. JURISDICTION AND VENUE**

8. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2 (2001) grants Plaintiff, the Commission, jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint. This Court has jurisdiction over this action pursuant to Section 6c of the Act, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that the defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district.

## **III. THE PARTIES**

### **A. The Plaintiff**

10. The **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the

provisions of the Act, 7 U.S.C. §§ 1 et seq. (2001), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2002).

**B. The Defendants**

11. **World-Wide Currency Services Corp.** is a Florida corporation, incorporated on August 7, 1998 and lists its address as 4801 South University Drive, Suite 2100, Fort Lauderdale, FL 33328. World-Wide has never been registered with the Commission in any capacity, nor has it been designated by the Commission as a contract market.

12. **Gennady Spivak, a.k.a., George Spivak** is an individual who resides at 118 Cassilly Way, Jupiter, FL 33458. Spivak was a director of World-Wide and incorporated the firm in 1998. Spivak has never been registered with the Commission in any capacity. Spivak consented to an Administrative Order by the Securities and Exchange Commission (“SEC”) to cease and desist from violating federal securities laws. The Order bars Spivak from associating with any broker dealer.

13. **Ellison Kent Morris** is an individual who resides at 1010 10<sup>th</sup> Way, West Palm Beach, FL 33407. He solicited customers on behalf of World-Wide and represented that he was a Vice-President of World-Wide. Morris has never been registered with the Commission in any capacity.

**IV.  
FACTS**

**A. Customer Solicitation**

14. Since December 21, 2000, and earlier, World-Wide has offered and/or sold foreign currency futures contracts to customers under the guise of conducting spot currency transactions. World-Wide solicits customers through telemarketing cold calls.

15. In their initial cold call, telemarketers for World-Wide, including Morris (“World-Wide telemarketers”), claim that World-Wide specializes in investments in foreign currency markets and that by acting quickly customers could take advantage of current market conditions and make substantial profits.

16. World-Wide telemarketers urge potential customers to invest with World-Wide, stating that the potential customer will make a profit within a short period of time. World-Wide telemarketers emphasize that investing with World-Wide is safe. In some instances, they tell customers that monthly returns will be small but consistent. One customer was promised a monthly return of 2-4%, another was told to expect a monthly profit of 10% - 20%, and others were promised anywhere from doubling their investment to earning as much as five times their investment in just a few months. Several customers report being told that World-Wide would pool customer funds and trade them as one account with the resulting profits distributed to customers based on the amount of their original investment.

17. In order to minimize risk, World-Wide telemarketers told customers that World-Wide was an established, experienced company with a “checks and balances” system which made losing money unlikely.

18. World-Wide distributes printed materials to its prospective customers, claiming to be an “investment management firm” that specializes in foreign currency trading through its “Managed Currency Program,” which it claims is traded with “relatively low exposure possible to risk and only in the most widely traded currencies.” World-Wide further claims that it’s “program targets a 2-4% monthly return with the lowest risk exposure possible.” The materials also state that 30-40% of World-Wide’s trades are profitable.

19. After the customer's initial investment, the customer typically would receive in the mail a statement reflecting their account balance. The statement provided no information as to how the money was invested.

20. Within a few weeks of their investment, customers typically received a second statement reflecting either a small loss or profit on their investment. This statement contained no specifics with respect to the investment or the calculation of losses or gains. This statement was inevitably followed by another phone call from World-Wide telemarketers. World-Wide telemarketers would urge further investment to either re-coup losses or to realize even greater profits. Concerns about further losses were assuaged by World-Wide telemarketers' promises that World-Wide would put a stop/loss order on the account which would insure no further losses on the investment. World-Wide telemarketers would refer customer requests to close accounts directly to Spivak, who stated to customers on numerous occasions that new brokers at World-Wide would earn them more money or that a stop/loss on their account would save them from losses.

21. After this follow-up sales pitch, whether customers invested more funds or not, customer statements typically would reflect steady decline until their account balance reflected a near total loss of their investment.

**B. Customer Funds and Purported Trading**

22. Between December 21, 2000 and April 30, 2002, World-Wide collected at least \$1.05million from customers and deposited those funds in a segregated customer account. On two occasions between December 21, 2000 and October 2001, World-Wide wired customer funds totaling about \$358,000 to a foreign investment firm, IFX Limited ("IFX"), based in London, England.

23. The existence of IFX was not disclosed to customers. Funds were traded at IFX in an account in the name of World-Wide. The World-Wide account did not list individual accounts for World-Wide customers, nor did it list individual customers as beneficiaries of any trading done by World-Wide.

24. Customers were told that their accounts traded on a daily or weekly basis and World-Wide generated and mailed monthly statements to customers. In fact, customer funds were sent to IFX only twice, and a majority of customer funds were transferred instead to World-Wide's operating account. No customer funds were wired to IFX after October 26, 2001, although World-Wide solicited and received approximately \$255,000 in customer funds between October 27, 2001 and April 2002.

25. Based on these facts, the isolated transfers of funds to IFX had only episodic, if any, relation to World-Wide's offer and sale of foreign currency futures contracts to customers.

26. Based on the foregoing, defendant World-Wide acted as the counterparty to the customer transactions Pursuant to Section 2(c)(B)(ii) of the Act, 7 U.S.C. § 2 (2001), World-Wide is not a proper counterparty for retail foreign currency futures transactions.

27. Even if IFX were considered the counterparty, IFX is not a proper counterparty for retail foreign currency futures transactions pursuant to Section 2(c)(B)(ii) of the Act, 7 U.S.C. § 2 (2001).

**C. World-Wide Has Misappropriated Customer Funds**

28. As set forth above, between December 21, 2000 and April 30, 2002, World-Wide collected \$1,054,969 from customers and deposited those funds in a segregated customer account. A portion of the customer funds (approximately \$358,000) was transferred to IFX. The remaining funds in the customer segregated account, in excess of

\$767,000 (including approximately \$71,000 in funds eventually returned from IFX), were transferred to the World-Wide operating account. In addition, no customer funds were wired to IFX after October 2001, although World-Wide received \$255,000 in customer funds between October 2001 and April 2002.

29. The customer funds transferred to the operating account were used to (a) pay operating expenses of World-Wide, including salaries to Spivack, Morris, and other World-Wide telemarketers, (b) pay personal expenses including restaurant bills, golf course fees and Direct TV subscriptions, and, (c) return investments, including purported profits reported to earlier investors. As of November 2002, less than \$50 remained in the customer segregated account.

**D. Defendants' Purported Foreign Currency Transactions Are Illegal Futures Contracts**

30. From December 21, 2000 to the present, defendants have conducted business out of their office in Palm Beach Gardens, Florida, for the purpose of offering and selling foreign currency futures contracts to the retail public. The contracts that World-Wide offer and sell have the characteristics indicative of futures transactions as detailed below.

31. The foreign currency contracts that defendants market concern the purchase or sale of commodities for future delivery at prices or using pricing formulas that are established at the time the contracts are initiated, and may be fulfilled through offset, cancellation, cash settlement or other means to avoid delivery.

32. Defendants market these contracts to the general public. Unlike parties to a spot transaction, the customers who purchase these futures contracts have no commercial need for the foreign currency. Instead, customers enter into these transactions to speculate and profit from anticipated price fluctuations in the markets for these currencies.

33. Customers do not anticipate taking and, in fact, do not take, delivery of the foreign currencies they purchase as a consequence of these investments. If the market moves in a favorable direction, a customer expects to liquidate his or her investment by authorizing the sale of the contract and taking the profits.

34. Defendants do not conduct their foreign currency futures transactions on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, nor are any of these transactions executed or consummated by or through a member of such a contract market. Defendants do not conduct their transactions on a facility registered as a derivatives transaction execution facility.

35. Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2 (2001), provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is “offered to, or entered into with, a person that is not an eligible contract participant” unless the counterparty, or the person offering to be the counterparty, is a regulated entity, as defined in the Commodity Futures Modernization Act of 2000.

36. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1 (2001), defines an eligible contract participant as an individual who has total assets in excess of: (a) \$10 million; or (b) \$5 million and who enters the transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred. At least some, if not all, of the foreign currency futures transactions alleged herein were offered to or entered into with persons who were not eligible contract participants. In addition, neither the defendants nor IFX is a proper counterparty for retail foreign currency transactions.

V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
COUNT I**

**VIOLATION OF SECTION 4(a) OF THE ACT, 7 U.S.C. § 6(a):  
OFFER AND SALE OF COMMODITY FUTURES CONTRACTS NOT  
CONDUCTED ON OR SUBJECT TO A BOARD OF TRADE WHICH HAS BEEN  
DESIGNATED AS A CONTRACT MARKET OR A TRANSACTION EXECUTION  
FACILITY**

37. Plaintiffs realleges paragraphs 1 through 36 above and incorporates these allegations herein by reference.

38. Since at least December 21, 2000, and continuing to the present, defendants World-Wide and Morris have offered to enter into, entered into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts have not been executed or consummated by or through a member of such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

39. Each foreign currency futures transaction not conducted on a designated contract market or derivatives transaction execution facility made during the relevant time period, including but not limited to those conducted by the defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2001).

40. Spivak, directly or indirectly, controlled World-Wide and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting these

violations of Section 4(a) of the Act, 7 U.S.C. § 6(a)(2001). Spivak is therefore liable as a controlling person for World-Wide's violations by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

## **COUNT II**

### **VIOLATIONS OF SECTION 4b(a)(2)(i) AND (iii) OF THE ACT AND COMMISSION REGULATION 1.1: SOLICITATION FRAUD AND FRAUD BY MISAPPROPRIATION OF CUSTOMER FUNDS**

41. Paragraphs 1 through 40 are realleged and incorporated herein.

42. By engaging in the foregoing fraudulent scheme, from at least December 21, 2000 and continuing to the date of the filing of the Complaint herein, defendants World-Wide, Spivak, and Morris, in or in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2001), have cheated or defrauded or attempted to cheat or defraud investors or prospective investors and willfully deceived or attempted to deceive investors or prospective investors by, among other things, (a) misappropriating customer funds, (b) explicitly misrepresenting the likelihood of profits; (c) misrepresenting and/or failing to disclose the risks of loss associated with the illegal futures contracts they offered and purported to sell to members of the public, and (d) failing to disclose that customer funds were misappropriated.

43. Defendants committed the aforementioned acts in violation of Sections 4b(a)(2)(a)(i) and (iii) of the Act and Regulation 1.1., 7 U.S.C. §§ 6b(a)(i) and (iii) (2001).

44. Each fraudulent misrepresentation and omission, and each act of misappropriating investor funds made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of

Section 4b(a)(2)(i) and (iii) and Regulation 1.1 of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2001).

45. Spivak, directly or indirectly, controlled World-Wide and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting these violations of Section 4b(a)(2) of the Act and Regulation 1.1. Spivak is therefore liable for World-Wide's violations by operation of Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2001).

## **VI.**

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff Commodity Futures Trading Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2001) and pursuant to the Court's equitable powers, enter:

1. an order of preliminary injunction and an order of permanent injunction prohibiting defendants World-Wide Currency Services Corp., George Spivak and Kent Morris, and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of Sections 4(a) and 4b(a) of the Act, 7 U.S.C. §§ 6(a) and 6b(a) (2001);
2. an order directing defendants World-Wide Currency Services Corp., George Spivak, and Kent Morris and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;
3. an order directing defendants World-Wide Currency Services Corp., George Spivak, and Kent Morris to make full restitution to every customer whose

funds were received by them as a result of acts and practices which constituted violations of the Act, and interest thereon from the date of such violations;

4. an order directing defendants World-Wide Currency Services Corp., George Spivak, and Kent Morris to pay a civil penalty in the amount of not more than the higher of \$120,000 for each violation or triple the monetary gain to defendants for each violation of the Act;
5. an order, if necessary, appointing an equity receiver;
6. an order requiring defendants World-Wide Currency Services Corp., George Spivak, and Kent Morris to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
7. such other and further remedial ancillary relief as the Court may deem just and proper.

Dated: January 13, 2003

Respectfully Submitted,  
ATTORNEYS FOR PLAINTIFF

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Robert J. Hildum  
Senior Trial Attorney  
(202) 418-5329  
RHildum@cftc.gov

Timothy Mulreany  
Senior Trial Attorney  
(202) 418-5306  
Tmulreany@cftc.gov

Karon Powell  
Trial Attorney  
(202) 418-5555  
KPowell@cftc.gov

COMMODITY FUTURES TRADING COMMISSION  
1155 21<sup>ST</sup> Street, NW  
Washington, D.C., 20581  
(202) 418-5000  
(202) 418-5523 (facsimile)